

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CRIMINAL CASE NO. 1:16-cr-00052-MR-WCM-1**

|                                  |   |                     |
|----------------------------------|---|---------------------|
| <b>UNITED STATES OF AMERICA,</b> | ) |                     |
|                                  | ) |                     |
| <b>Plaintiff,</b>                | ) |                     |
|                                  | ) |                     |
| <b>vs.</b>                       | ) | <b><u>ORDER</u></b> |
|                                  | ) |                     |
| <b>DEORDRICK BOYKIN,</b>         | ) |                     |
|                                  | ) |                     |
| <b>Defendant.</b>                | ) |                     |
| _____                            | ) |                     |

**THIS MATTER** is before the Court upon the Defendant's letter, which the Court construes as a motion for sentence reduction pursuant to Section 404 of First Step Act of 2018 [Doc. 140].

In March 2017, the Defendant was convicted of conspiracy to distribute and possess with intent to distribute heroin, in violation of 21 U.S.C. §§ 841(b)(1)(C) and 846. [Doc. 123]. He was sentenced to a term of 100 months' imprisonment. [Id.].

The Defendant now moves for a reduction of his sentence pursuant to Section 404 of the First Step Act of 2018. [Doc. 140]. The First Step Act of 2018, Pub. L. 115-391, was signed into law on December 21, 2018. Section 404 of the Act gives retroactive effect to the changes made by Sections 2

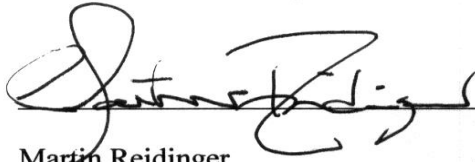
and 3 of the Fair Sentencing Act of 2010. Section 404(a) defines a “covered offense” as “a violation of a Federal criminal statute, the statutory penalties for which were modified by Section 2 or 3 of the Fair Sentencing Act of 2010 . . . , that was committed before August 3, 2010.” Sections 2 and 3 of the Fair Sentencing Act of 2010 increased the quantity of cocaine base required to trigger the enhanced penalties of 21 U.S.C. § 841 and eliminated the mandatory minimum for simple possession of cocaine base under 21 U.S.C. § 844(a).

Here, the Defendant pled guilty to and was convicted of the charge of conspiracy to distribute and to possess with intent to distribute heroin, in violation of 21 U.S.C. §§ 841(b)(1)(C) and 846. This conspiracy offense did not involve cocaine base, and the offense conduct occurred well after the enactment of the Fair Sentencing Act of 2010. [See Doc. 3 at 1]. Accordingly, the Defendant is not eligible for relief under Section 404 of the First Step Act because he was not convicted of a “covered offense” under Section 404(a)’s definition.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendant’s letter, which the Court construes as a motion for sentence reduction pursuant to Section 404 of First Step Act of 2018 [Doc. 140], is **DENIED**.

**IT IS SO ORDERED.**

Signed: March 11, 2020

  
Martin Reidinger  
United States District Judge

